



Presidential Pardon Granted to Nigeria's Rev. Jolly Nyame, Joshua Dariye and 157 Others: Delimiting the Confluence Between Morality and Legality

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ABSTRACT

The President of the Federal Republic of Nigeria while acting within his constitutional powers as enshrined under section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and with the approval of the Council of State, pardoned the erstwhile governors of Taraba and Plateau States; Rev. Jolly Nyame, Joshua Dariye and 157 others with respect to the various offences for which they were convicted and serving various terms of imprisonment. There exists genre of mixed reactions arising from the grant of the pardon largely based on the morality involved. This paper using the doctrinal research methodology appraised the presidential pardon granted by delimiting the confluence between morality and legality and observed that it is very vivid from section 175(1), (2) & (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), there is no criterion fixed before the discretion is exercised by the President in consultation with the Council of State. The paper concludes that it will serve no good to an accused/defendant to spend a life incarcerated when he can still be useful to himself and the society and recommended that the wide discretionary powers of the President as well as those of the governors need to be checked by constitutional amendments by providing and or listing the factors/criteria that the President in consultation with the Council of State, would have to take into consideration before the exercise of the said pardon.

Keywords: Pardon, Council of State, Morality, Legality, Constitution and imprisonment.

INTRODUCTION

Rev. Jolly Nyame¹ was convicted by Adebukola Banjoko, Judge of a Federal Capital Territory High Court Gudu on the 30th of May 2018 and sentenced to 14 years imprisonment. His appeal to the Court of Appeal of Nigeria had his jail term reduced to 12 years. Further miffed by the said decision, he appealed to the Supreme Court of Nigeria² challenging the jurisdiction of the

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¹ The erstwhile governor of Taraba State of Nigeria.

² The Supreme Court of Nigeria like other Superior Courts of record in the land is a creature of the Constitution and in that vein it also limits its power. In this regard, the 1999 Constitution and the Supreme Court Act Cap. 424, Laws of the Federation of Nigeria, 1990 as amended, confer jurisdiction on the Supreme Court. To this effect the Supreme Court is conferred with both appellate and original jurisdictions. See also the cases of Attorney General Ondo State v. Attorney General of the Federation & Ors. (1983) 2 SCNLR 269; Attorney General of the Federation vs. Attorney General of Abia State & Ors. (2001) 11 FWLR (Pt. 725) 689, (2001) 11 NWLR (Pt. 725) 689; Onuaguluchi vs. Ndu (2001) 7 NWLR (Pt. 712) 309 and Awuse vs. Odili (2003) 18 NWLR (Pt. 851) 116.

Federal Capital Territory High Court Gudu to have entertained the case, craved for the further reduction of the 12 years sentence as well as the 100 Million fine imposed on him by the Court of Appeal of Nigeria. At the Supreme Court, the appeal against the imposition of fine succeeded but the Supreme Court affirmed the 12 years jail term. Hon. Justice Amina Augie JSC held that the Court of Appeal of Nigeria was gracious enough to have reduced it to 12 years as a first time offender.

On his part, Joshua Dariye³ was convicted by Adebukola Banjoko, Judge of a Federal Capital Territory High Court Gudu on the 12th of June 2018 and sentenced to 14 years imprisonment for the offence of in relation to the diversion of Billion of naira from the Plateau State Ecological Fund while he was the governor and two years imprisonment for the offence of Criminal Misappropriation. On appeal to the Court of Appeal of Nigeria, the Court reduced the 14-years sentence for the offence of Criminal Breach of Trust to 10 years and reduced the two years sentence for Criminal Misappropriation to one year. On further appeal to the Supreme Court of Nigeria, the apex court however, upheld Dariye's concurrent conviction and sentence by the trial court and the Court of Appeal for the offence of Criminal Breach of Trust but proceeded to quash his conviction and sentence in relation to the offence of Criminal Misappropriation.

The President of the Federal Republic of Nigeria⁴ while acting within his constitutional powers⁵ and with the approval of the Council of State⁶ pardoned the erstwhile governors of Taraba and Plateau States; Rev. Jolly Nyame, Joshua Dariye and 157 others with respect to the various offences for which they were convicted and serving various terms of imprisonment. In all, 159 convicts were granted presidential pardon by the President for diverse offences.

There exists genre of mixed reactions arising from the grant of the Presidential pardon. Some (majority) questioned the morality in the grant while others argued that the exercise of the powers by the President was ill advised, an abuse of power that has embolden political thieves and unrepentant pilferers of the country's national wealth. Yet others see it as a disservice to the Judiciary and the like of Dr Emeka Obegolu, SAN vehemently argued that it is unfair to demonize the Nigerian authorities for pardoning people who have spent considerable period of time detention (prison custody) and have shown remorse.

This article attempts to analyze whether moral argument against the exercise of the Presidential powers to grant a pardon can affect the legality of such exercise? An attempt would similarly be made to delimit the confluence between morality and legality in the exercise of Presidential pardon in Nigeria.

CLARIFICATION

This article should not be seen as a support for those who engage in the perpetration of corruption or corrupt practices. The writer recognizes the fact and endorses the need to implement and apply public policy against corruption and financial crimes which have turned

³ The erstwhile governor of Plateau State of Nigeria.

⁴ General Muhammadu Buhari (Rtd).

⁵ As enshrined under section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁶ The Council of State is established by section 153(1) of the Constitution and under paragraph 5, Part 1 of the Third Schedule of the Constitution, it comprises of high profile personalities who have excelled in their respective fields of human endeavour.

out to be 'deadly snakes' and financial hooliganism daily killing Nigeria and Nigerians. But at the same time, it becomes imperative to put the records straight and clarify issues in matters relating to law to ensure that justice is not only done, but manifestly seen to have been done.

Scope of the Research

The scope of the research is restricted to the consideration of presidential pardon in Nigeria as it only relates to those granted to the erstwhile governors of Taraba and Plateau States; Rev. Jolly Nyame, Joshua Dariye and 157 others by the President of the Federal Republic of Nigeria.

Objective of the Research

The objective of this research is to analyze whether moral argument against the exercise of the Presidential powers to grant a pardon can affect the legality of such exercise? Efforts would be made to delimit the confluence between morality and legality in the exercise of Presidential pardon in Nigeria.

METHODOLOGY

The research methodology employed in the writing of this article is the doctrinal research method for the purposes of identification and analysis. The primary data are obtained through the adoption of doctrinal methodology. Doctrinal research method is to a large extent library oriented with reliance fully placed on relevant literatures. Reliance was equally placed on primary sources of data which involved a consideration of various types of legislation and court decisions in relation to the subject matter under consideration. Finally, originality is exhibited in making analysis and recommendations.

Morality and Law

Morals are standards of life adopted in any given society. It equally denotes the character or conduct considered as good or descent, ethical, virtuous and therefore considered as a persuasive system. Law is quite distinct from and its validity is no way dependent on morals or morality. The validity of a legal rule depends solely on legal criteria. There is therefore not only the legal duty to obey law but also a moral duty to obey the same law. It is the view of Prof. H. L. A. Hart that; *"Law as it is, should be kept distinct from law as it should be"*. Law therefore can be a public expression of morality which codifies in a public way the basic principles of conduct which a society accepts. The public expression of the Constitution which is in fact the *"tons juris"* is reflected in Constitution which posits thus;

WE THE PEOPLE of the Federal Republic of Nigeria:

HAVING firmly and solemnly resolved:

TO LIVE in unity and harmony as one indivisible and indissoluble Sovereign nation under God dedicated to the promotion of inter – African solidarity, world peace, international co-operation and understanding;

AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice and for the purpose of consolidating the Unity of our people:

DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES THE FOLLOWING Constitution⁷:

⁷ See the preamble to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The above preamble is in agreement with the view of Prof. R. N. Gilchrist who opined thus; "the State is founded on the minds of its citizens who are moral agents". Morality when taken too far can conflict with the law but can never override the law itself. For instant in ancient China, some people rob properties from the rich and give to the poor and it was considered morally right but illegal in the eyes of the law. Likewise an action can be legal but morally wrong. An epitome of this is where some people spend thousands of Dollars on pets while others are on the street hungry without food.

In jurisprudence, law and morality are not synonymous. The case of **ATTORNEY GENERAL, FEDERATION VS ABUBAKAR**⁸ establishes the fact that an act that is morally reprehensible may not be legally punishable. Arguments founded on moral obligations are only valid and binding in conscience and according to natural justice, but it is not recognized by the law as adequate to set in motion the machinery of justice. In the case of **KABO AIR LTD v. MOHAMMED**⁹, **HABEEB ADEWALE OLUMUYIWA ABIRU, JCA** posited thus;

"Moral obligation on the other hand is "a duty which is valid and binding in conscience and according to natural justice, but it is not recognized by the law as adequate to set in motion the machinery of justice; that is one which rests upon ethical considerations alone, and is not imposed or enforced by positive law"¹⁰

MEANING AND CONSEQUENCES OF PARDON

The word "pardon" has a wide connotation and it has been defined as an official decision not to punish somebody for a crime or to say that somebody is not guilty of a crime; the action of forgiving somebody for something; to officially allow somebody who has been found guilty of a crime to leave prison and/or to avoid punishment; to forgive someone for something they have said or done. It also means the act of officially nullifying punishment or other legal consequences of a crime.¹¹

A pardon is an act of grace by an appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges forfeited on account of the offence. The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all of corporal penalties and forfeitures annexed to the offence pardoned. In the case of **FALAE v. OBASANJO & ORS (NO. 2)**¹², MUSDAPHER, J.C.A, held thus;

A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges forfeited on account of the offence. See Verneco Inc. v. Fidelity & Cas C. at New York 253 LA 721,219 SO 2D 508,511. The effect of a pardon is to make the offender a new man (novus homo), to acquit him of all of corporal penalties and forfeitures annexed to the offence pardoned. I am of the view, that by virtue of the pardon contained in Exhibit 11, the disqualification of the 1st respondent was to suffer because of his conviction, has been wiped out. His full civil rights and liberties

⁸ (2007) 10 NWLR (PT.1041) 1.

⁹ (2014) LPELR-23614(CA).

¹⁰ Ibid at Pp 41 - 41 paras C – E.

¹¹ See Adeola Vs State (2017) LPELR 42327 (CA).

¹² (1999) LPELR-6585(CA).

are fully restored and accordingly he has not been caught by the provisions of Section 13(1) (h) of the Decree.¹³

Whichever way the word is used, it presupposes that the person to be pardoned has done something which the law presumes to be criminal or has committed an offence or is guilty of a crime.

Settled Law: The Scope of Presidential Pardon in Nigeria and the United States of America

The exercise of Presidential pardon on the 159 convicts by the President of the Federal Republic of Nigeria attracted unprecedented attention as it relates not to all the convicts granted the pardon but the duo of erstwhile governors of Taraba and Plateau States; Rev. Jolly Nyame and Joshua Dariye. The exact dimension of Presidential pardon is decoded in the Constitution and these aspects are so well established that it is unlikely that any court, conservative or liberal will renounce them. For emphasis, the power of the President to exercise a Presidential pardon is extremely broad. It is vested in the President acting in consultation with the Council of State. It is a discretionary powers vested on the President. A discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law. In the case of **THE OWNERS OF THE M. V. LUPEX V. NIGERIAN OVERSEAS CHARTERING AND SHIPPING LTD**,¹⁴ Mohammed J .S.C. stated thus;

"An exercise of discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law..."¹⁵

The powers of a President to grant a pardon in Nigeria are provided for under Section 175 of the Constitution of the Federal Republic of Nigeria 1999, as follows:

1. The President may:-

- a. grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
- b. grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- c. substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
- d. remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

By Section 175 of the Constitution supra, it is clear that the President can exercise the right of pardon of persons before ('concerned with') or after conviction of an offence. Under section 175(2) of the Constitution, the powers of the President under sub section (1) of section 175 shall be exercised by him after consultation with the Council of State. The Council of State is established by section 153(1) of the Constitution and under paragraph 5, Part 1 of the Third Schedule of the Constitution, it comprises of high profile personalities who have excelled in their respective fields of human endeavour to wit:

- a. The President, who is the Chairman;

¹³ Ibid at p.21, paras. C-F.

¹⁴ (2003) LPELR-3195(SC).

¹⁵ Ibid at p. 18, paras. D-F.

- b. The Vice – President, who shall be the Deputy Chairman;
- c. All former Presidents of the Federation and all former Heads of the Government of the Federation;
- d. All former Chief Justices of Nigeria;
- e. The President of the Senate;
- f. The Speaker of the House of Representatives;
- g. All the Governors of the States of the Federation; and
- h. The Attorney – General of the Federation.

The responsibility of the Council of State is to advise the President in the exercise of his powers with respect to prerogative of mercy.¹⁶ From the foregoing, a presidential pardon is one form of the clemency powers of the President under the Constitution. The powers extend to all federal offences. Therefore, the Constitution must always be construed in such a way that it protects what it sets out to protect, and guides what it is meant to guide.¹⁷ In interpreting the Constitution of a nation, it is the duty of the Court to ensure that the words of the Constitution preserve the intendment of the Constitution.¹⁸ Every Constitution has a life and moving spirit within it and it is this spirit that forms the *raison d'être* of the Constitution and without which the Constitution will be a dead piece of document. The life and moving spirit of the 1999 Constitution is captured in the preamble. It has been held that when a constitutional provision is interpreted, the cardinal rule is to look to the Preamble to the Constitution as the guiding star and the directive principles of State Policy as the 'book of interpretation' and that while the Preamble embodies the hopes and aspirations of the people, the directive principles set out the proximate grounds in the governance of the country.¹⁹ In the United States of America, the plenary power to grant a pardon or a reprieve is granted to the President.²⁰ The only limitation provided in the Constitution is that pardon is limited to Federal offences and they cannot affect impeachment process. It reads;

"The President shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment"

The grant of Presidential pardon is not novel to other parts of the world. In the United States of America, approximately 20,000 pardons and commutations were issued by the United States Presidents in the 20th Century alone. President Gerald Ford announced his decision to pardon former President Richard Nixon in relation to the Watergate Scandal²¹. Barrack Obama pardoned, commuted or rescinded the conviction of 1, 927 people amongst which include James Cartwright, Dwright J. Loving, Chelsea Manning, Willie McCovey, Ian Schrager and Oscar Lopez Rivera etc.

¹⁶ See paragraph 6 (a) (ii), Part 1 of the Third Schedule of the Constitution.

¹⁷ See the case of *Adeleke Vs Oyo State House of Assembly* (2006) 6 NWLR (Pt 1006) 608.

¹⁸ See the cases of *Okogie Vs Attorney General, Lagos State* (1981) 2 NCLR 337, *Abaribe Vs Speaker, Abia State House of Assembly* (2002) 14 NWLR (Pt 788) 466, *Marwa vs Nyako* (2012) LPELR 7837 (SC).

¹⁹ See *Thakur vs Union of India* (2008) 6 SCC 1.

²⁰ See Article 11, section 2, clause 1 of the Constitution of the United States of America.

²¹ This announcement was made on the 8th of September 1974.

SETTLED LAW: LIMITATIONS OF PRESIDENTIAL PARDON

Although the power of Presidential pardon in Nigeria is broad, the power is not without its limitations. The President can only pardon or grant a respite for federal offences and the pardoning power only extends to criminal offences created by an act of the National Assembly and does not extend to civil actions and the power is exercisable only after consultation with the Council of State²². No pardon can be granted to an innocent man. There cannot be a pardon where a person has a pending appeal against his conviction for murder and sentence to death and as such cannot be pardoned by the President of Nigeria under the provisions of Sections 175 of the 1999 Constitution (as amended) until the appeal has been heard and determined. In other words, that there can be no pardon until it is certain that the accused person has been finally convicted.²³

VALIDITY OF THE GRANT OF PRESIDENTIAL PARDON TO 159 CONVICTS

It is very vivid from section 175(1), (2) & (3) of the Constitution that there is no criterion fixed to determine the factors that must be taken into consideration before the discretion is exercised by the President in consultation with the Council of State. One cannot therefore breadth into the Constitution what is not there. It is therefore expected that whatever decision influenced the grant of the Presidential pardon and taking into consideration the caliber of personalities that constitutes the Council of State, it was done in good faith and which saw 159 convicts as beneficiaries. Mala fide is the opposite of a bona fide. It simply means bad faith as opposed to bona fide which is good faith, mala fide projects sinister motive designed to mislead or deceive another. Mala fide is more than bad judgment or mere negligence. It is a conscious doing of a wrong arising from dishonest purpose or moral obliquity. Good faith or "bona fide" action is implied in the decision taken. To insist otherwise is an argument taken too far. In the case of **ODENIYI v. ONALAJA & ANOR**,²⁴ **UGOCHUKWU ANTHONY OGAKWU, JCA** posited thus;

*"Now, the phrase bona fide means good faith, it could also be defined as the absence of bad faith. Also it denotes honestly, without fraud or collusion in wrongdoing. See SPIESS V. ONI (2016) LPELR (40502) 1 at 23 (SC), SHODEINDE V. THE REGD. TRUSTEES OF THE AHMADDIYA (1983) LPELR (3064) 1 at 53-54 (SC) and ANIMASHAUN V. OLOJO (1990) LPELR (419) 1 at 17 (SC)."*²⁵

Section 168 (1) of the Evidence Act 2011 raises a presumption of regularity and the processes leading to the grant of pardon. In the case of **FRN v. ACHIDA & ANOR**²⁶, **HABEEB ADEWALE OLUMUYIWA ABIRU, JCA** held as follows;

... However, I believe it will be stretching it a bit too far to say that an Instrument of Pardon is incompetent for failing to say so on its face. Section 168 (1) of the Evidence Act raises a presumption of regularity in favor of such an Instrument of Pardon, as in the instant case; that the power was exercised by the Governor in due

²² See generally section 175 of the Constitution.

²³ See the case of Solola vs The State (2005) All NLR 443.

²⁴ (2017) LPELR-50545(CA).

²⁵ Ibid at Pp 19 - 20 paras E – A.

²⁶ (2018) LPELR-46065(CA).

*consultation with the Advisory Council on Prerogative of Mercy. It was for the Appellant to rebut the presumption...*²⁷

No such valid rebuttal had been advanced. In a Council of State comprising of the President, who is the Chairman; the Vice – President, who shall be the Deputy Chairman; all former Presidents of the Federation and all former Heads of the Government of the Federation; all former Chief Justices of Nigeria; the President of the Senate; the Speaker of the House of Representatives; all the Governors of the States of the Federation; and the Attorney – General of the Federation, it is uncharitable and casting unreasonable aspersions to argue that the President was ill advised in the circumstances. Moral arguments will not suffice and will fly into oblivion in the face of legality. The Supreme Court of Nigeria in the cases of **EZEUGO VS OHANYERE**²⁸, **ONIAH VS ONYIA**²⁹, **MBACHU VS ANAMBRA-IMO RIVER BASIN DEVELOPMENT AUTHORITY OWERRI**³⁰, **UDOSEN VS STATE**³¹ has stated over and over that the Court is for espousing the law and not a place for sentiments and that sentiments command no place in judicial adjudication. In other words sentiments command no place in exposition of the frontiers of the law. Thus, it is settled law that if there is a right to do an act (in this case, the right to grant a Presidential pardon), the fact that the motive for doing the act is bad or self-serving will not affect its validity or legality of such a grant. Likewise, where there is no right or the thing done is illegal, the purity of the motive or magnanimity of the act done will not alter the legal consequence.³² In the case **PEUGEOT AUTOMOBILE NIGERIA LTD VS OJE & 3 ORS**³³, Mahmud Mohammed, JCA (as he then was) stated thus: *"... I think the age-long principle of the law, that law and morality are almost always poles apart is still very much alive"*³⁴

One other thorny area of the law that a view was expressed has to do with the fact that the duo of Rev. Jolly Nyame and Joshua Dariye were tried under the Penal Code Act and it was the view of Chief Mike Ozekhome SAN, that the Penal Code Act is a reflection of a State Legislation and therefore the President cannot grant a pardon under section 175(1) of the Constitution as the power rests on the State governors to do so. This view can hardly hold water.

It must be stressed here that ordinarily, criminal offences in Northern Nigeria are tried within the Penal Code while criminal matters in the Southern part of Nigeria are tried under the Criminal Code.³⁵ There is however the Penal Code Act, a federal legislation applicable to the FCT, Abuja as the National Assembly has powers to make laws for the whole of Nigeria.³⁶ I am not aware of any conflict that has been pointed out between the Penal Code Act and the Penal Code Law of the respective States under consideration. It was in the light of the above that a similar argument was advanced up to the Supreme Court level by the duo and both the trial Federal High Court of Nigeria sitting at Gudu, the Court of Appeal of Nigeria and the Supreme

²⁷Ibid at Pp 98 - 100 paras E – E.

²⁸ (1978) 6-7 SC 171.

²⁹ (1989) 1 NWLR (PT.99) 514.

³⁰ (2006) 14 NWLR (PT.1000) 691.

³¹ (2007) 4 NWLR (PT.1023) 125.

³² See the cases of *Anosike Building & Commercial Co Vs Federal Capital Development Authority* (1994) 8 NWLR (363) 421 and *Nwajagu vs British American Insurance Co. (Nig) Ltd* (2000) 14 NWLR (PT.687) 356.

³³ (1997) 11 NWLR (PT.530) 625.

³⁴ Ibid at page 636 paras D-E.

³⁵ See the case of *Esthon vs FRN & ANOR* (2020) LPELR-49994 (CA).

³⁶ See the case of *Eze vs Udeh & Ors* (2017) LPELR-42716 (CA).

Court of Nigeria all held that that the trial court had the requisite jurisdiction to try the offences against the duo thus paved the way for the application of the Penal Code Act and there subsequent conviction and sentence under the Act. In the case of **NYAME v. FRN**³⁷, OYEBISI FOLAYEMI OMOLEYE, JCA posited thus;

... In the instant case, the learned trial Judge held "inter alia" that: "In the light of above, I find that there is (sic) both subject matter as well as territorial jurisdiction. The proof of evidence has already shown that some of the acts were alleged (sic) committed within the Federal Capital Territory, thus conferring jurisdiction on this Court in terms of Section 4(2) (b) of Penal Code Act and Section 6(m) and Section 7(2) (f) of the Economic and Financial Crimes Commission." The proof of evidence shows explicitly that part of the "elements" of the offences with which the Appellant has been charged took place within the Federal Capital Territory, Abuja. From the combined effect of the provisions of Section 257(1) & (2) of the 1999 Constitution and Section 4(2)(b) of the Penal Code Act, the High Court of the Federal capital Territory, Abuja could assume jurisdiction to try the Appellant for the offences with which he has been charged. I have no ought against but agree with the sound ruling of the lower Court being appealed in assuming jurisdiction to try the Appellant, for it possesses jurisdiction...³⁸

Having being convicted under an Act of the National Assembly, the President and indeed the Council of State never goofed in the grant of the Presidential pardon to the beneficiaries. The grant was validly made irrespective of the motive allegedly involved.

CONCLUSION AND RECOMMENDATIONS

It may be argued that the essence of imprisonment of offenders of whatever colour is to meet the legitimate expectations of the society for retribution, where the society strikes back at the offender as to deter potential offenders and make the commission of crime, especially financial crimes, unattractive, protect the public and society by ensuring that dare devil criminals and recalcitrant offenders are taken out of circulation.³⁹ But the overall essence of sentencing and or punishment should be reformatory in nature and not punitive. This view was upheld by **IKYEGH, JCA** in the case of **OLATIDOYE v. THE STATE**.⁴⁰ It will therefore serve no good to an accused/defendant to spend a life incarcerated when he can still be useful to himself and the society. But where the law provides for mandatory punishment as in capital offences, then it is quite unfortunate that an accused person will have to pay the ultimate penalty for his reckless actions but that is the law and it is not open to any Court of law to go contrary to the law.

To my mind, a pardon simply erases the penalties and at least some disabilities attendant to a conviction. Despite being pardoned, a person would still have to answer 'yes' when asked if he had ever been convicted of a crime.

³⁷ (2008) LPELR-8872(CA).

³⁸ Ibid at Pp 42 - 46 Paras E – E.

³⁹ See the cases of Agbiti v. The Nigerian Navy (2007) LPELR - 4893 (CA) and Ali v. FRN (2016) LPELR - 40472 (CA).

⁴⁰ (2010) LPELR - 9079 (CA).

The State Governors have their own powers of prerogative of mercies which they discretionary exercise in consultation with the Advisory Council of the State on Prerogative of Mercy as may be established by the Law of the State.⁴¹ Therefore the call for the Attorney General of the Federation as well as the President to grant pardon to all “thieves” has no support under the law. To prevent suspicion, mutual distrust and possible abuse arising from the exercise of Presidential pardon, the wide discretionary powers of the President as well as those of the governors need to be checked by constitutional amendments by providing and or listing the factors/criteria that the President in consultation with the Council of State, would have to take into consideration before the exercise of the said pardon. In this way, it would meet the legitimate expectations of the citizens to know when the said power is abused and challenge same if need be before a court of competent jurisdiction.

⁴¹ See generally section 212(1) & (2) of the Constitution.